

John [unclear] [unclear]
Defendant

00-1162-CR

Case No. 00-1162

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U.S. District Court
Southern District of Florida
Miami, Florida

{ Defendant's Counsel }

Comes now defendant John [unclear] and by counsel hereby files this objection to PSR recommending that defendant be sentenced to the career offender act out to a state drug conviction.

In support thereof defendant states;

1. The PSR recommended that defendant be sentenced to the career offender due to his state drug conviction to wit: trafficking in heroin a lesser included offense DKT. C92829-PSR. p.9.10

Hold on a second defendant now if defendant is not guilty of comes within the meaning of a controlled substance offense under its guideline definition. USSC §4B1.1 defendant plead guilty to violating Nevada's drug statute §453.3385 which is lesser included offense to the count that was dismissed against defendant, to wit: conspiring to sell. PSR p.11 para. 38, thus, as defendant is not guilty of the offense that was dismissed against him because it is the conduct of which the defendant was convicted in support of the inquiry. US v. Hernandez, 145 F.3d 1443 (11th Cir. 1998). Defendant pleaded guilty to Nevada's §453.3385 We must then look only to its statutory elements of the offense. US v. Taylor, 110 S.Ct. 2143 (1990)

It is the gov't burden to produce the proof that defendant import, export, distribute, dispense, or possession with intent all the above. Taylor, Supra; Hernandez Supra.

[Signature]

Furthermore, courts are not to place a burden on the
offense when the term "Taylor" does not mean anything
under the guidance of Taylor. See, *US v. Brandon*
247 F.3d 186-195-96 (4th Cir. 2001)

In short, the govt. Must prove that the sentencing hearing
defendant's plea heard. If not, if Nevada's Statute
Meaning of **§453.3385** contains elements that are not clear,
to properly determine if defendant's offense under
state law qualifies for enhanced sentence pursuant to the
correction of offender. See *Taylor, supra. Hernandez, supra*,
See also, *U.S. v. Martinez*, **232 F.3d 728 (9th Cir. 2000)**

Thus, defendant's plea and demands that govt. be put
to its burden of proof at sentencing that defendant's
state law conviction qualifies under the correction of offender
sentence. If not, defendant must be sentenced under the
guidelines.

Date: JUN 22 2001

Respectfully Submitted

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